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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,628	01/22/2002	Thomas James Klofta	7571RD	7063

27752 7590 07/27/2005

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

6

Office Action Summary

Application No.

10/054,628

Applicant(s)

KLOFTA ET AL.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/16/05 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-5, and 9-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Krzysik et al. USPN 6149934.

As to claim 1, Krzysik discloses an absorbent article 20, which defines a front waist region 22, a rear waist region 24, and a crotch region 26, which interconnects the front and rear waist region, and the article comprising:

- a) a vapor permeable backsheet 32;
- b) a liquid pervious topsheet 34, which is positioned in facing relation with the backsheet;
- c) an absorbent core 36 located between the backsheet and the topsheet; and
- d) a skin care composition on at least a portion of a wearer-contacting surface of the absorbent article, which comprises from about 10 to about 95 weight percent of an emollient, from about 5 to about 95 weight percent of a wax (Abstract and col. 9, lines 30-41) , and from about 0.1 to about 25 weight percent of a rheological agent selected from the claimed group of rheological agents (col. 9, lines 30-41 and col. 10, line 48 through col. 11, line 6). A rheological agent in a lotion composition generally affects the ability of the composition to flow or be deformed. Krzysik discloses a viscosity enhancer component that acts as a stabilizer in the lotion composition (col. 10, lines 48-51). Krzysik does not refer to the agent as a rheological agent, however, the examiner interprets the viscosity enhancer of Krzysik to serve the same function as the rheological agent of the present invention. Additionally, Krzysik discloses some of the same components of the claimed group of materials (col. 10, lines 57-62) in the same weight percentage (col. 11, lines 1-6), which further indicates the viscosity enhancers of Krzysik are suitable for use a rheological agent.

As to claims 2 and 3, see col. 9, lines 42-63.

As to claim 4, see col. 10, lines 19-37.

As to claims 5, 6, and 9-10, see col. 10, lines 58-61.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik et al. 6149934 in view of Colon et al. USPN 4743238.

Krzysik discloses the present invention substantially as claimed. However, Krzysik does not disclose castor oil as a rheological agent present in the lotion composition. Colon generally teaches castor oil as a viscosity modifier (col. 6, lines 57-62 and col. 10, lines 39-41) for the benefit of reducing viscosity to provide a higher softening point. It would have been obvious to one having ordinary skill in the art to modify the invention of Krzysik with castor oil for the benefits taught in Colon.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krzysik et al. 6149934 in view of McIver et al. USPN 60666673.


Krzysik discloses the present invention substantially as claimed except that Krzysik discloses silicas and zinc stearate (col. 10, lines 48-61), as a rheological agent instead of alkyl galactomannan. McIver teaches alkyl galactomannan is functionally equivalent as a viscosity modifier (col. 68, line 66 through col. 69, line 14). Therefore, because the compositions are art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute alkyl galactomannan for silicas or zinc stearate.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jacqueline F Stephens
Examiner
Art Unit 3761

May 27, 2005